

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of the Commission's )  
 Rules to Establish New Personal )  
 Communications Services )

GEN Docket No. 90-314

**REPLY TO OPPOSITIONS**

Comcast Corporation ("Comcast"), by its attorneys, hereby submits its Reply to Oppositions to its Petition for Reconsideration filed in response to the Commission's Second Report and Order in the Personal Communications Services ("PCS") rulemaking proceeding.<sup>1/</sup> Comcast limits its Reply to several critical points: establishment of pro-competitive PCS eligibility rules; adoption of structural safeguards appropriate to LEC participation in PCS; clarification of designated entity participation in PCS; and timing of auction eligibility compliance.

I. **ADOPTION OF COMCAST'S PROPOSALS WOULD PROMOTE FAIR, ROBUST COMPETITION TO THE MONOPOLY LOCAL EXCHANGE.**

Comcast views PCS as critical for the introduction of local loop competition. As stated in its Petition, and perhaps best illustrated by the recent flurry of BOC investments in cable operators, Comcast contends that cable systems will offer the platform from which real, near term alternatives to the LEC local loop will emerge.<sup>2/</sup> It is critical for the realization of this competitive vision, however, that cable operators such

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1/ See Personal Communications Services, 8 FCC Rcd 7700 (1993) ("PCS Order").

2/ Petition at 4-6.

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as Comcast be permitted to team their broadband capacity with the PCS spectrum that will be essential to the development and viability of a competitive wired/wireless local telecommunications infrastructure.

The Commission's limited focus on the prospect for wireless competition has resulted in a PCS eligibility restriction that unreasonably restrains Comcast from capitalizing on its existing cable infrastructure to provide a full range of services competitive to the landline local loop.<sup>3/</sup> For these reasons, Comcast has requested reconsideration of the eligibility rules, both for itself and for other non-wireline cellular operators desiring to offer robust competition to the bottleneck monopoly exchange.

Comcast, for one, has no monopoly bottleneck or similar incentive to stifle competition, while Bell Atlantic has a local loop core monopoly to protect. Similarly, no other cellular carrier whose system does not overlap an affiliated LEC network has sufficient market power to constitute an impediment either to local loop or multiregional wireless competition.

Predictably, Bell Atlantic has taken issue with Comcast's proposals to the extent they raised the specter of near term, actual competition to their entrenched LEC facilities in the Philadelphia area, claiming, among other things, that Comcast is seeking protection from competition.<sup>4/</sup> Comcast is not seeking an unfair advantage or

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3/ Comcast is a cable television service provider in areas of Philadelphia and its affiliate is the non-wireline cellular operator in the Philadelphia MSA. As Comcast stated in its Petition, the 10 MHz allocation available to cellular entities is patently inadequate for this purpose. Petition at 5.

4/ See Opposition of Bell Atlantic Personal Communications, Inc. at 11-12. Bell Atlantic also seems to claim that Comcast's proposed investment of \$500 million towards QVC's bid for Paramount evidences Comcast's unlimited access to funds.  
(continued...)

attempting to shield itself from competition. Comcast competes daily with Bell Atlantic through its cellular subsidiaries and Eastern TeleLogic, its local competitive access subsidiary. Rather, Comcast is concerned with the development of competition in an environment where companies that have not been the beneficiaries of monopoly telephone revenues and cellular set asides, among other things, are hamstrung in their efforts to challenge those who have been afforded such government subsidies. Overbroad PCS eligibility rules will unnecessarily bar the participation of potential PCS providers who have the capability, including the cable and cellular infrastructures, to rapidly and efficiently deploy PCS technologies and who wish to provide competition to the local loop.

In opposing Comcast's Petition, Bell Atlantic brushes off the critical distinction between the non-contiguous, sporadic markets of cable operators and the limited scope of non-wireline cellular operators in its region, on the one hand, and Bell Atlantic's integrated monopoly base on the other. Comcast does not enjoy monopoly control over the provision of any telecommunications service throughout a single metropolitan area, MSA, BTA, MTA or state within Bell Atlantic's vast region. However, if permitted to capitalize upon its existing infrastructures and with access to 30

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4/ (...continued)

While we cannot dispute Bell Atlantic's characterization of Comcast as a "well-financed, experienced and aggressive telecommunications player" its argument here is nonetheless misleading. The issue is not whether Comcast has access to financial markets, but whether the Commission, in pursuing its long-term goal of a competitive telecommunications marketplace, should disregard the relative size, economies of scale and scope maintained by the holders of the bottleneck monopoly.

MHz of spectrum, Comcast will be able to provide local loop competition to the one provider who can lay claim to such market dominance.

If local loop competition is truly a Commission goal there is every reason to treat those with monopoly bottlenecks differently from those without.<sup>5/</sup> Parties other than the LECs must be able to achieve economies of scale and scope. The net effect of the Commission's PCS eligibility rules on Comcast is to shelter Bell Atlantic from local loop competition in the Philadelphia MTA. This anti-competitive result could not have been what was intended by the PCS eligibility restrictions. Comcast's willingness to cultivate PCS to its full competitive potential can only be realized if the Commission modifies its current cellular restrictions.

## **II. STRUCTURAL SEPARATION MUST BE A REQUIREMENT OF LEC PCS PARTICIPATION.**

The PCS Order permits LECs to bid on either 30 MHz or 10 MHz PCS licenses, depending upon whether the LEC has a disqualifying cellular interest in a particular PCS market. Current PCS rules would further permit LECs to integrate their monopoly landline operations with their PCS operations. Comcast has called for the establishment of LEC separate subsidiaries for PCS participation corresponding to their proposal for PCS integration.<sup>6/</sup> Comcast argued that structural separation of LEC wired

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<sup>5/</sup> See Chairman Reed Hundt Information Superhighway Summit Speech, Los Angeles, California January 11, 1994 at 3 ("[W]herever someone dominates a market, we want potential competitors to have access and entry to that market, so that monopolies will give way to competition.").

<sup>6/</sup> See Comcast Petition at 19-20. Specifically, Comcast recommended that the LECs continue to separate their wired and wireless businesses and that existing structural separation requirements be strengthened.

and wireless businesses is essential to discouraging anti-competitive behavior,<sup>7/</sup> and observed that the potential threat to competition posed by integrated LEC/PCS operations are, if anything, more direct in PCS than they were in cellular.<sup>8/</sup>

While no party addressed Comcast's tailored approach to LEC structural separation, several parties opposed in principle the establishment of LEC structural separation for reasons ranging from their desire to permit bottleneck monopolies to capitalize on their existing infrastructure to their belief that all interconnection disputes are either all resolved or never occurred.<sup>9/</sup>

Sprint, NYNEX and Pacific Bell are simply wrong first to suggest that interconnection and cross-subsidy problems have not plagued the telecommunications market,<sup>10/</sup> and second to posit it unlikely that new interconnection and cross-subsidy

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7/ Id. (noting that PCS non-structural rules ignore LECs' historic abusive behavior in respect to their marketing, pricing and cross-subsidization practices).

8/ See also David P. Reed, Putting it All Together: The Cost Structure of Personal Communications Services, Federal Communications Commission, OPP Working Paper No. 28 at 59-60 (November 1992) (recognizing that safeguards against discriminatory practices and cross-subsidy must be established for LEC PCS participation) ("Reed Study").

9/ Sprint and NYNEX argue that structural separation is unnecessary because cellular interconnection has been successfully implemented and no evidence of PCS discrimination has been presented. See Oppositions of NYNEX at 6; Sprint at 6. Pacific Bell refers to "purported LEC cellular interconnection abuses," and claims that the costs of structural separation in PCS outweigh its benefits. Pacific Bell at 6. Finally, USTA enumerates a number of "benefits" to be realized by permitting exchange carriers to integrate radio access to with their existing networks.

10/ See e.g. Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnections, CC 93-162, released November 12, 1993 (LEC interconnection tariff rates found unlawful); Ameritech Operating Companies, Transmittal Nos. 697, et al., 8 FCC Rcd 4589 (1993) (finding LEC's

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abuses and concerns will arise in the implementation of competitive, full featured networks.

The Commission's assumption that integrated LEC participation in PCS will lead to favorable interconnection arrangements with non-affiliates is contrary to history and ignores the real economic desire of entrenched monopolies to protect their turf. Even in the world of structurally separate cellular, for example, LECs have negotiated interconnection arrangements with their cellular subsidiaries, then imposed on non-wireline cellular competitors the terms and conditions of those prenegotiated services. The Commission is in danger of allowing this cycle to repeat itself in PCS. Prophylactic measures must be adopted before PCS is licensed in order to circumvent the possibility that similar monopoly abuses will arise in the development of competitive PCS services.<sup>11/</sup> Unless the Commission is willing to devote its limited resources to the conduct of extensive monitoring of LEC interconnection, unbundling and pricing for all

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10/ (...continued)  
interconnection tariffs to raise significant questions of lawfulness regarding cost allocations, resulting rate levels, rate structures, and terms and conditions of service); Bell Atlantic Telephone Companies, Revisions to Tariff F.C.C. No. 1 Transmittal No. 418, 6 FCC Rcd 4794 (1991) (Bell Atlantic's Transmittal No. 418 relating to access charges applied to IXC's when end user connection provided by Radio Common Carrier found violative of Commission's rules); Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2911 (1987) (finding efforts to establish guidelines for landline-cellular interconnection only "partially successful" in light of continuing abuses).

11/ The critical importance of interconnection cannot be underestimated. The Commission has specifically recognized the disastrous effects that can result from bad-faith interconnection negotiation. See Declaratory Ruling, 2 FCC Rcd 2910, 2912-13 (1987); Cellular Interconnection, 4 FCC Rcd 2369, 2374 (1989); Reed Study at 59 ("many PCS are not likely to succeed without interconnection to public telephone network at reasonable rates").

services and facilities offered by each LEC, the only effective means of policing discrimination will be by requiring structural separation between the LEC and its PCS operations. At least then the Commission and competitors will have some ability to detect abuses.

In challenging Comcast's Petition in this regard, a number of commenters made reference to the Computer III proceedings pertaining to the BOC ability to market Customer Premises Equipment ("CPE"). Simply stated, CPE is not PCS. There are many equipment vendors, most of whom are well established prior to BOC entry, and each of whom had access to markets beyond any region dominated by a single BOC. Such is not the case where the goal is the development of facilities based competition to the local loop, and Computer III offers little, if any guidance here. Further, USTA and Pacific Bell assume that the Commission has performed the on the record, cost-benefit analysis as set forth in Computer III. In fact, no such analysis has been made for PCS.<sup>15/</sup>

The potential for competitive local telecommunications will be crippled if the Commission fails to require structural safeguards to ensure robust, unbundled interconnection and to eliminate the potential for illegal cross-subsidy and joint marketing.<sup>16/</sup> As Comcast previously observed, the Commission has only a single

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<sup>15/</sup> To this point, the Commission's analysis of these complex issues has consisted only of repeating the unsupported assertions made by parties participating in this rulemaking. No record evidence has been submitted or examined and no independent evaluation of the costs and benefits of avoiding structural separation has been made.

<sup>16/</sup> The propriety of such a requirement is confirmed by the fact that major pending telecommunications infrastructure bills before Congress incorporate the  
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opportunity to set basic groundrules that will permit the development of a competitive PCS marketplace. Allowing unrestrained LEC participation in PCS at the outset will seriously threaten the competitiveness of the PCS marketplace and provide unnecessary opportunities for abuse.

**III. DESIGNATED ENTITIES MUST BE PROVIDED A REALISTIC OPPORTUNITY TO PARTICIPATE IN PCS.**

Comcast's Petition advocated a designated entity exception to PCS/cellular eligibility rules where designated entities join with non-wireline cellular service providers to develop their PCS services. Permitting non-wireline cellular companies to enter into joint ventures with designated entities would not only result in greater benefits to the designated entities involved, but would guarantee that Congress' goal of establishing a diverse PCS marketplace would be accomplished.

Cablevision asserts that "by virtue of their superior knowledge and experience," cellular operators will "essentially control effected systems."<sup>17/</sup> Cablevision does not afford credit to the rules prohibiting de facto transfers of control.

Administrative sanctions are sufficiently severe to discourage attempts by cellular operators to take control of designated entity licenses. Yet the effect of Cablevision's position would be to prevent those in perhaps the best possible position to provide designated entities with management capabilities from doing so and therefore

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<sup>16/</sup> (...continued)

establishment of LEC separate subsidiaries as a condition of their entry into new markets. Only after the PCS marketplace has sufficiently developed and the Commission concludes that full and fair interconnection is available can nonstructural safeguards be considered.

<sup>17/</sup> See Opposition of Cablevision at 6.



Cablevision's argument for a restriction on cellular involvement is contrary to the public interest.

Further, Comcast's recommendations are consistent with Commissioner Barrett's approach to encourage reasonable opportunities for designated entities.<sup>18/</sup> Allowing non-wireline cellular operators to joint venture or conclude other mutually beneficial business arrangements with designated entities will not only provide the preferred groups with control over their licenses but will also provide them with the financial wherewithal to bid, construct and operate PCS systems in a highly competitive environment. Permitting non-wireline cellular operators to participate in this way will provide designated entities a "greater chance at full area coverage from day one."<sup>19/</sup>

#### IV. A SIX MONTH PERIOD FOR RESTRUCTURING IS REASONABLE

Comcast's Petition suggested the adoption of a reasonable period of time for PCS license winners to come into compliance with eligibility rules following the PCS auctions. MCI opposes this recommendation.<sup>20/</sup>

MCI overlooks the wide discretion afforded the Commission in determining the appropriate timing for disclosure of applicant information.<sup>21/</sup> The

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<sup>18/</sup> Commissioner Barrett favored providing MTA licensees with incentives to include designated entities in their ownership and control. See PCS Order, Statement of Commissioner Barrett at 5 n.3.

<sup>19/</sup> Id. at 16.

<sup>20/</sup> Specifically, MCI suggests that Comcast's proposal may not satisfy the requirements of Section 309(j)(5) and does not include a standard by which to distinguish "massive" from "conforming" structural modifications. See MCI Opposition at 16-17.

<sup>21/</sup> See Budget Act §6002(j)(5); Competitive Bidding, 8 FCC Rcd 7635 (1993).

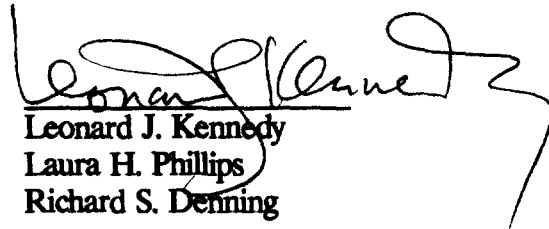
Budget Act merely provides that no license should be granted unless the Commission determines that the applicant is qualified to operate the license. The Budget Act does not require the Commission to make specific eligibility determinations at the time of application filing.<sup>22/</sup>

V. CONCLUSION

The development of a competitive PCS marketplace should not be left to chance. Comcast's Petition and this Reply demonstrate the need for the Commission to revise its approach to PCS as discussed in the Reply and in Comcast's Petition for Reconsideration.

Respectfully submitted,

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<sup>22/</sup> Further, Comcast did not suggest a specific standard for distinguishing between permissible or impermissible restructuring. Rather, a six month deadline permits potential bidders to make determinations on restructuring prior to PCS auction participation. No "costly and time-consuming litigation" will ensue, as MCI suggests, since the restructuring is either completed or it is not by the end of the six month grace period for compliance.

**CERTIFICATE OF SERVICE**

I, Pamela Marie DuBost, hereby certify that today on this 13th day of January, 1994, I caused a copy of the REPLY TO OPPOSITIONS OF COMCAST CORPORATION to be served by hand delivery or first-class mail, postage prepaid to the following:

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